IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9610 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANDYA SUBHASH JASWANTRAI

Versus

ASST COMMISSIONER OF SALES TAX

Appearance:

MR DIPAK R DAVE for Petitioner

MR SS PATEL for MR SP HASURKAR for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. It is a wholly misconceived and frivolous petition before this court which has unnecessarily consumed its valuable and precious time. The petitioner has been given compassionate appointment, otherwise I would have awarded heavy costs in favour of respondents also.

2. Admittedly, the petitioner has failed to pass pre-service examination in three attempts which are permissible to him under relevant rules. The learned counsel for the petitioner despite of time and again putting by the court, failed to show any provision from the Rules, Regulations or Standing Order that after failing of the petitioner three times in the pre-service examination, there is an obligation on the part of the State Government to continue him in service. Contrary to what it is there under the Rules, which have been placed for perusal of the court, after failure of the petitioner the appointing authority has all the right to terminate his services. The petitioner filed this petition by taking cause of action from some letter of the Sardar Patel Institute for Public Administration, Ahmedabad, under which it has been stated that on failure of the petitioner in third term in pre-service examination, his services are to be terminated. This is the personal opinion of the institution which is not binding on the respondent and it has not given any cause of action to the petitioner to come before this court to challenge the same. It is also admitted case of the petitioner that his services have not been terminated by the respondents so far. That is another ground on which this petition deserves to be dismissed. So far as the claim of the petitioner for fourth chance to appear in the examination is concerned, if it is available to the petitioner under the Rules, he can avail of otherwise.

3. In the result, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. No order as to costs. It is made clear that the respondent - appointing authority is free to terminate the services of the petitioner in accordance with law. It is also open to the petitioner to apply to the State Government for fourth change, if it is permissible to him to apply under the Rules and if such application is filed, the same shall be considered and decided within one month from the date of receipt thereof. However, this liberty given to the petitioner will not come in the way of the respondents to forthwith dispense with the services of the petitioner in accordance with law.

(sunil)